

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DIANNE L. KELLEY and KENNETH  
HANSEN,

Plaintiffs,

v.

MICROSOFT CORPORATION, a Washington  
Corporation,

Defendant.

NO. C07-0475 MJP

DECLARATION OF MARK  
WILNER IN SUPPORT OF  
PLAINTIFFS' MOTION TO  
COMPEL DISCOVERY AND TO  
DEEM CERTAIN REQUESTS FOR  
ADMISSION "ADMITTED"

CLASS ACTION

I, Mark A. Wilner, declare as follows:

1. Identity and Competency. I am an attorney with the law firm of Gordon Tilden

Thomas & Cordell, LLP. Together with Keller Rohrback, LLP, we represent the plaintiffs.

2. Efforts to Independently Obtain Documents Regarding Other Consumer Class

Actions Against Microsoft. Between myself, other lawyers, and paralegals, our office has devoted more than 70 hours (to date) attempting to locate court documents in other consumer class actions against Microsoft that are unavailable on Lexis Nexis (i.e., federal and state published opinions and limited case filings). Our effort has yielded very limited results for a variety of reasons, including the following:

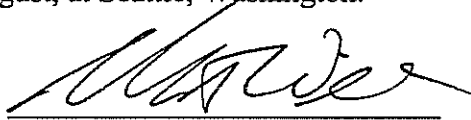
DECLARATION OF MARK WILNER - 1  
No. C07-0475 MJP

GORDON TILDEN THOMAS & CORDELL LLP  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154  
Phone (206) 467-6477  
Fax (206) 467-6292

- We searched PACER for federal District Court actions against Microsoft. This, itself, was cumbersome because PACER provides limited search capabilities, e.g., party name, date, court, and case type—the latter of which does not include a specific case type on “class actions” thus requiring individual inquiry into each and every docket listing and court filing therein. Further, many case listings on PACER contained court files that were closed or otherwise unavailable for our inspection.
- We also searched databases to locate consumer class actions against Microsoft that were filed in Washington state. This was a county-by-county search and, given the available search criteria, proved to be cumbersome, again requiring an individualized inquiry even to determine whether the case was a class action. For most cases where we could identify that Microsoft was a party, the court files had been archived and had no available docket.
- We are unaware of any ability to search the courts of other states without individual inquiry to each county throughout the United States. We have attempted to obtain documents from county court clerk’s files where we were able to identify Microsoft as a party on Lexis Nexis and the case printout included the trial court docket number. In a few instances, we were successful. In other instances, we were not, e.g., where the clerk’s office had destroyed the court file.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of August, at Seattle, Washington.

  
Mark A. Wilner

**CERTIFICATE OF SERVICE**

I hereby certify that on August 30, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following.


**Counsel for Defendant Microsoft Corporation**

Stephen M. Rummage, WSBA #11168  
Cassandra L. Kinkead, WSBA #22845  
Charles S. Wright, WSBA #31940  
Davis Wright Tremaine LLP  
1201 Third Avenue Suite 2200  
Seattle, Washington 98101-3045  
[steверummage@dwt.com](mailto:steверummage@dwt.com)  
[cassandrakinkead@dwt.com](mailto:cassandrakinkead@dwt.com)  
[charleswright@dwt.com](mailto:charleswright@dwt.com)

**Counsel for Defendant Microsoft Corporation  
– Admitted Pro Hac Vice**

Charles B. Casper  
Montgomery, McCracken, Walker & Rhoads  
123 South Broad Street  
Philadelphia, PA 19109  
[ccasper@mmwr.com](mailto:ccasper@mmwr.com)

**GORDON TILDEN THOMAS & CORDELL LLP**

By   
Mark A. Wilner, WSBA #31550  
Attorneys for Plaintiff  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154-1007  
Telephone: (206) 467-6477  
Facsimile: (206) 467-6292  
Email: [mwilner@gordontilden.com](mailto:mwilner@gordontilden.com)